

## **ADMINISTRATIVE PANEL DECISION**

Ferm Living ApS v. Jia hongbin, hongbinJia  
Case No. D2023-4173

### **1. The Parties**

The Complainant is Ferm Living ApS, Denmark, represented by Aera A/S, Denmark.

The Respondent is Jia hongbin, hongbinJia, China.

### **2. The Domain Name and Registrar**

The disputed domain name <fermlivingnew.com> is registered with Mat Bao Corporation (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2023. On October 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 16, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 17, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on November 23, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant, founded in 2006, is a Danish company based in Copenhagen, which specializes in the manufacture and sale of furnishings and interior designs. The Complainant has a broad portfolio of high-quality furnishings, including furniture, works of art and other decorative accessories. The products produced and distributed by the Complainant are sold in more than 75 countries worldwide. The Complainant's products are based on a purist and functional Danish design style all designed by in-house designers. The Complainant's products are sold under the brand FERM LIVING. This includes the FERM LIVING device which comprises the word "ferm" in lower case with a bird device perched on the letter "m" and the word LIVING in upper case under "ferm".

The Complainant has trade mark registrations for FERM LIVING and the FERM LIVING device in many countries around the world including Denmark, the European Union ("EU") and China world including the following:

- Danish TM Registration No. VR200700835 for FERM LIVING (figurative) registered on March 27, 2007
- Danish TM Registration No. VR 201400497 FERM LIVING device registered on March 3, 2014
- International Registration ("IR") No. 1391990 (designating among others the EU and China) FERM LIVING registered on August 16, 2017
- IR No. 1228352 (designating among others the the EU and China) FERM LIVING device registered on March 26, 2014

(together, individually and collectively referred to as the Trade Mark").

The Respondent appears to be based in China. The disputed domain name was registered on August 22, 2023. The disputed domain name is connected to a website which bears the Trade Mark in the form of the FERM LIVING device, mimics the Complainant's own website at "www.fermliving.com" including using its images and purportedly offers for sale merchandise that bears the Trade Mark at discounted prices and purports to be the Complainant's products (the "Website").

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. The Complainant requests transfer of the disputed domain name.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the other term here, “new” after the Trade Mark in the disputed domain name may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the nature of the disputed domain name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent must have been aware of the Trade Mark when he registered the disputed domain name given the Trade Mark was registered prior to registration of the disputed domain name and, the reputation of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should

have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the disputed domain name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain name falls into the category stated above and the Panel finds that registration is in bad faith. The addition of the term "new" after the Trade Mark further reflects that the Respondent had the Complainant in mind when registering the disputed domain name.

The disputed domain name is also being used in bad faith. The products offered for sale on the Website are likely to be unauthorised and heavily discounted FERM LIVING products considering the difference in prices and the fact that there is no relationship between the Parties.

The content of the Website is calculated to give the impression it has been authorized by or connected to the Complainant when this is not the case. The Website was set up to deliberately mislead Internet users that it is connected to, authorised by or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent's Website is and the products sold on it are those of or authorised or endorsed by the Complainant.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <fermlivingnew.com> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: December 18, 2023